



U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Building
26 Federal Plaza, 37th Floor
New York, New York 10278

July 15, 2024

BY CM/ECF

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Leonardo Fernandez*, 19 Cr. 267 (JGK)

Dear Judge Koeltl:

At the Court's request, the Government submits this letter in response to Defendant Leonardo Fernandez's argument in his June 18, 2024 submission that he is entitled to a reduction in sentence based on Amendment 821 because he should not have been sentenced as a career offender. (Docket No. 49).

The defendant is not entitled to relitigate his career offender status at this juncture under U.S.S.G. § 1B1.10(b)(1), which instructs courts considering reduction motions filed under 18 U.S.C. § 3582(c)(2) to "substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and *shall leave all other guideline application decisions unaffected.*" (emphasis added). For this reason, the Court should not consider whether the defendant would still be a career offender if he were to be resentenced today, or any other intervening changes in the Guidelines or the caselaw interpreting particular Guidelines provisions.¹

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: /s/
Andrew K. Chan
Assistant United States Attorney
(212) 637-1072

cc: Leonardo Fernandez (by mail)

¹ In light of Second Circuit cases clarifying that Criminal Sale of a Controlled Substance in the Third Degree, in violation of New York Penal Law § 220.39(1), is not a "controlled substance" offense for purposes of the Armed Career Criminal Act ("ACCA"), *see United States v. Minter*, 80 F.4th 406, 407 (2d Cir. 2023), the Government concedes that the defendant would likely not be classified as a "career offender" pursuant to U.S.S.G. § 4B1.1, applying the Second Circuit's most recent caselaw on this issue.